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**State Government & Tribal Affairs**  
**Committee**

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**HB 1676**

**Brief Description:** Changing open public meetings act provisions.

**Sponsors:** Representatives Kessler, Miloscia, Ross and Kelley; by request of Attorney General and State Auditor.

**Brief Summary of Bill**

- Authorizes governing bodies of public agencies to record executive session.
- Authorizes a judge to require a governing body found in violation of the Open Public Meetings Act (OPMA) to record executive sessions for two years.
- Exempts recordings of executive sessions from disclosure under the Public Records Act.
- Provides a public agency conditional immunity from liability for damages to any person that are the consequence of specific actions made without legal authority in an executive session so long as self-disclosure occurs prior to final action and there is no actual or anticipated litigation.
- Authorizes the Attorney General (AG) and the State Auditor to appoint an advisory committee to make recommendations on the adoption of model rules for the OPMA.
- Requires each elected or appointed official who is a member of a public agency governing board subject to the OPMA to receive certificated training within 90 days of the AG's adoption of model rules or within 90 days of assuming office.

**Hearing Date:** 2/17/09

**Staff:** Tracey O'Brien (786-7111)

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Open Public Meetings Act (OPMA) requires that all meetings of the governing body of a public agency be open to the public and all persons shall be allowed to attend. For the purposes of the OPMA, a public agency is defined broadly and includes, but is not limited to, any state board, commission, department, education institution, agency, local government, and special purposes district. A governing body is defined as the multimember board, commission, committee, council, or other policy or rulemaking body of a public agency or any committee thereof that is acting on behalf of the public agency.

A governing body may meet without the public for portions of a regular or special meeting to discuss certain issues. "Executive session" is not expressly defined in the OPMA, but according to the Attorney General's Deskbook, the term is commonly understood to mean that part of a regular or special meeting of the governing body that is closed to the public. A governing body may hold an executive session only for purposes specified in statute and only during a regular or special meeting. Washington courts have held that because an executive session is an exception to the OPMA's overall provisions requiring open meetings, a court will narrowly construe the grounds for an executive session in favor of requiring an open meeting.

Some of the matters that may be discussed in an executive session include: matters affecting national security; the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price; and the qualifications of an applicant for public employment or to review the performance of a public employee.

Any person may bring an action in Superior Court to enforce the OPMA. The judge may assess a civil penalty of \$100 for any members of a governing body who attends a meeting where the governing body takes action in violation of the OPMA if the member knew the meeting was in violation of the OPMA. Any person who prevails against a public agency in any action in the courts for a violation of the OPMA shall be awarded costs, including reasonable attorneys' fees incurred in connection with such legal action. Any public agency that prevails in any action alleging a violation of the OPMA may be awarded reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

### **Summary of Bill:**

The governing board of a public agency may record its closed executive session meetings. These recordings are public records exempt from disclosure, copying or inspection under the PRA unless the disclosure of the recording is explicitly authorized by a resolution of the governing body. Any disclosure of an otherwise protected recording by the public agency does not waive any privilege or statutory exemption for other protected recordings.

A court may order, as a remedy for any intentional violation of the OPMA, the recording of the governing body's closed executive sessions for a period of two years from the date of the order. Recordings must be retained for a period of two years and are exempt from disclosure, inspection or copying under the PRA.

An agency has conditional immunity from liability for damages to any person that are the consequence of specific actions made without legal authority in an executive session where the governing body:

- Self discloses those specific actions in writing and by reading aloud in public at the first regular public meeting after the agency discovers, should have discovered, or receives a complaint of an unauthorized action in an executive session. The disclosure shall be available for public copying and inspection;
- There is no final action related to the specific action prior to the self disclosure; and
- There is no actual or anticipated litigation related to the specific action.

The Attorney General's office shall publish and update a pamphlet explaining the OPMA in plain language.

The Attorney General (AG) and the State Auditor shall appoint an advisory committee of public and governmental entity representatives to make recommendations on the adoption of advisory model rules. The advisory model rules shall address:

- Agencies, governmental entities and advisory committees subject to the OPMA;
- Meetings and actions required to be conducted openly;
- Procedures and requirements regarding quorums, notice, and actions for meetings;
- Matters that may be conducted in closed sessions;
- Penalties and other consequences for failure to comply with the OPMA;
- Any other issues determined by the AG.

The AG shall adopt the advisory model rules for public agencies by January 1, 2010.

The AG shall ensure that certified training is made available that is based upon and consistent with the AG's Model Rules. The Office of the AG may provide training and may also approve any acceptable course of training to be offered to the governmental body or other entity. The AG or other entity providing the training shall provide a certification of course completion to elected or appointed officials who complete an approved training curriculum. The AG shall ensure that at least one course of training approved or provided by the AG is available by internet, videotape or a widely available medium at little or no cost.

Each elected or appointed official who is a member of a governmental body subject to the OPMA shall complete training and receive certification regarding the responsibilities of the governing body and its members under the OPMA. Currently elected and appointed officials shall complete and certify training within 90 days of the adoption of the AG's Model Rules. Newly elected or appointed officials shall complete and certify training within 90 days of assuming the responsibilities of office. A governmental body shall maintain and make available for public inspection and copying the record of each member's certification of completion of training.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.